

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE 650 FIFTH AVENUE AND
RELATED PROPERTIES

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08 Civ. 10934(KBF)
ECF CASE

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Civ. 165, 09 Civ. 166

**MEMORANDUM OF LAW IN SUPPORT OF THE RUBIN PLAINTIFFS' MOTION
FOR CORRECTION OF SUMMARY JUDGMENT OPINION AND ORDER**

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Ordered

Any party wishing to
respond to this motion
shall do so not later
than April 15, 2014.

LCB. Form
USDJ

4/10/14

Plaintiffs Jenny Rubin, Deborah Rubin, Stuart E. Hersh, Renay Frym, Noam Rozenman, Elena Rozenman, Tzvi Rozenman, Daniel Miller, and Abraham Mendelson (collectively, the “Rubin Plaintiffs”)¹ respectfully submit this memorandum of law in support of their motion, pursuant to Fed. R. Civ. P. 60(a), for an order correcting this Court’s March 28, 2014 Opinion and Order (Dkt. No. 1102), which, *inter alia*, granted summary judgment on behalf of the private judgment creditors in these consolidated actions against the Alavi Foundation, and 650 Fifth Avenue Company. The Rubin Plaintiffs specifically seek correction of the Opinion and Order in the following respects: (i) removing the Rubin Plaintiffs from Footnote 13 of the Opinion and Order; and (ii) adding the Rubin Plaintiffs to the last sentence of page 33 of the Opinion and Order so that the Court’s rulings with respect to section 1610(g) of the FSIA apply to the Rubin Plaintiffs.

Footnote 13 of the Opinion and Order states in pertinent part: “The Greenbaum, Peterson, and Rubin plaintiffs do not have judgments under section 1605A and therefore do not seek summary judgment under section 1610(g) of the FSIA.” (Dkt. No. 1102, at 33, n. 13) This statement is, by no fault of the Court, incorrect. It is indeed true that the Rubin Plaintiffs did not move for turnover pursuant to § 1610(g) of the FSIA. This is because undersigned counsel for the Rubin Plaintiffs believed that the Rubin Plaintiffs had not obtained judgments pursuant to section 1605A, but rather solely possessed judgments under section 1605(a)(7). Based on recent discussions with co-counsel in Israel, who have represented the Rubin Plaintiffs during and since they obtained their underlying judgments against the Islamic Republic of Iran and other Iranian individuals and entities in *Rubin et al. v. Islamic Rep. of Iran et al.*, 1:01-cv-01655-RMU

¹ Plaintiffs Jenny Rubin, Deborah Rubin, Stuart E. Hersh, Renay Frym, Noam Rozenman, Elena Rozenman, and Tzvi Rozenman commenced *Rubin, et al. v. Alavi Foundation, et al.*, 09 Civ. 165, on January 8, 2009, while Plaintiffs Daniel Miller and Abraham Mendelson commenced a separate action on the same date, *Miller, et al. v. Alavi Foundation, et al.*, 09 Civ. 166, which seeks identical relief and asserts virtually identical allegations. Both cases were later consolidated before the Court as part of the 08 Civ. 10934 master docket.

(D.D.C.), undersigned counsel learned that the Rubin Plaintiffs do, in fact, possess judgments pursuant to section 1605A of FSIA.

Undersigned counsel first appeared in this action on June 21, 2012, several years after the initial complaint had been filed on behalf of the Rubin Plaintiffs in this action. Our firm only represents the Rubin Plaintiffs in this action, and not in the various other judgment enforcement actions that have been filed by the Rubin Plaintiffs since 2003. Accordingly, counsel was entirely unaware of the section 1605A judgments. The existence of the section 1605A judgments only came to our firm's attention very recently when co-counsel reviewed the March 28, 2014 Opinion and Order, and, for the first time, alerted us to the fact the Rubin Plaintiffs had obtained section 1605A judgments before Judge Urbina of the United States District Court for the District of Columbia in *Rubin et al. v. Islamic Rep. of Iran et al.*, 1:01-cv-01655-RMU (D.D.C.).

In connection with this motion, we have provided the Court with two documents that make it clear that the Rubin Plaintiffs have obtained section 1605A judgments from the United States District Court for the District of Columbia. Annexed to the Declaration of Aitan D. Goelman is a copy of the Rubin Plaintiffs' motion in *Rubin et al. v. Islamic Rep. of Iran et al.*, 1:01-cv-01655-RMU (D.D.C.), which, pursuant to § 1083(c)(2) of the National Defense Authorization Act for Fiscal Year 2008, sought to give the Rubin Plaintiffs' judgments effect "as if this action had originally been filed under section 1605A(c) of title 28, United States Code." (See Goelman Decl., Ex. A) Judge Urbina of the United States District Court for the District of Columbia granted this motion on June 3, 2008. (See Goelman Decl., Ex. B, at 5)

The Rubin Plaintiffs, therefore, respectfully request that the Court issue a corrected version of the March 28, 2014 Opinion and Order that reflects that the Rubin Plaintiffs are

entitled to turnover of defendants' assets, including "defendants' interests in the Building, its associated bank accounts, the seven Alavi-only properties, and the three Alavi-only bank accounts" (Dkt. No. 1102, at 33), pursuant to section 1610(g) of the FSIA.

CONCLUSION

For the reasons stated above, the Rubin Plaintiffs respectfully request that the Court's March 28, 2014 Opinion and Order be corrected to: (i) remove the Rubin Plaintiffs from Footnote 13 of the Opinion and Order; and (ii) add the Rubin Plaintiffs to the last sentence of page 33 of the Opinion and Order.

Dated: April 9, 2014
New York, New York

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By: /s/ Aitan D. Goelman

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